IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANILBHAI KANUBHAI CHAUDHARY

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for M/S THAKKAR ASSOC. for Petitioner

MR UDAY BHATT Ld. AGP for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 29.6.2000, Annexure-A, in respect of petitioner passed by respondent no. 2 in exercise of

his powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the petitioner-detenu is a "bootlegger" within the meaning of section 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on 5 prohibition cases list in grounds of detention. She has also placed reliance on statements of 4 anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the case of the detaining authority statements of 4 anonymous witnesses were recorded on 18.4.200, 9.5.200, date is not legible and 10.5.2000 respectively. As per the papers, the said statements were not verified by the detaining authority himself but were verified by the Sub-Divisional Magistrate, Vyara on 19.6.2000 and order of detention has been passed on 29.6.2000, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in the petition.

4. Ms. Suman Pahwa learned advocate for petitioner has argued that when the detaining authority has placed reliance on statements of 4 anonymous witnesses, she ought to have verified the statements by herself only. She should not have entrusted that duty on her subordinate officer. Ms. Suman Pahwa has cited an authority of Kalidas Chandubhai Kahar vs. State of Gujarat and Ors., reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise to verify the statements for its correctness and genuineness. Here in this case, the detaining authority has not verified the statements. He entrusted that important work to his subordinate officer and, therefore, privilege claimed by her is not according to law and, therefore, this writ petition deserves to be allowed.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 29.6.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody, for any criminal case or proceedings.

Rule is made absolute. Direct service permitted.

(H.H. MEHTA, J.)
mandora/